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No. 46

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

GUST YIATCHOS, *Petitioner*

vs.

PEARLE W. YIATCHOS, etc., et al

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE RESPONDENT AND INTERVENOR

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OPINIONS

The statements in this connection of the Brief for the Petitioner (Page 1) are correct.

JURISDICTION

It is submitted that this Court does not properly have jurisdiction herein and the Writ of Certiorari should be dismissed, since any Federal question involved has been resolved by a previous decision of this Court in *Free vs. Bland*, 369 U.S. 663, 8 L ed 2d 180, 82 S. Ct. 1089, and the decision of the Supreme Court of the State of Washington in this case is in conformity therewith.

QUESTIONS PRESENTED

The question presented is whether a husband can, by using the device of United States savings bonds, purchase with community property in his name bonds payable on death to some third person, and deprive his

wife of her vested interests and share in the community property of the marital community, and further deprive the estate of community funds which, under the laws of the State of Washington, must be available for payment of community debts prior to the testamentary disposition of decedent's one-half community interest in the property.

STATEMENT

The deceased, Angel N. Yiatchos, during coveture of marriage to Pearle W. Yiatchos, purchased United States savings bonds with community property. On each bond purchased, Angel N. Yiatchos was registered as owner and petitioner herein, Gust Yiatchos, the brother of Angel N. Yiatchos, was registered as "Pay on Death" beneficiary. Angel N. Yiatchos died and by his will bequeathed all cash and bonds that he owned as of the date of his death to his relatives in Greece.

Petitioner brought suit, claiming ownership of the bonds as the registered "Pay on Death" beneficiary. Respondent, the widow, Pearle W. Yiatchos, as deceased's widow and executrix of the will of Angel N. Yiatchos, claimed a one-half interest in the bonds as her community share and asked that the remaining one-half interest be distributed according to the terms of the decedent's will. The respondent Counsel General of Greece, as attorney in fact for the legatees under decedent's will living in Greece, intervened, praying that one-half of the bonds be distributed to the widow and the remaining one-half be distributed to legatees of the will.

The trial court decided the case on the stipulated facts and ordered one-half of the bonds distributed to the surviving spouse and the remaining one-half inter-

est distributed to legatees under the will.

The Supreme Court of the State of Washington affirmed the trial court decision.

SUMMARY OF ARGUMENT

I.

This case is in accord with the decision of this Court in *Free vs. Bland, supra,* and within the exceptions noted by this court in that case.

II.

The attempt by deceased, Angel N. Yiatchos, to convert community property to separate property by the use of United States savings bonds is in fraud of the rights of respondent and therefore void and within the exception to the ruling in *Free vs. Bland, supra.*

III.

Treasury Regulations require that the form of registration of the bonds must express the actual ownership of and interest in the bonds. Since this was not done in this case, the other treasury regulations concerning survivorship and transfer of the bonds do not apply. (31 C.F.R. 315.0, et seq.)

ARGUMENT

I.

CONTRARY TO PETITIONER'S ASSERTION, THE OPINION OF THE WASHINGTON STATE COURT IS IN AGREEMENT WITH, NOT IRRECONCILABLE WITH, *Free vs. Bland, supra.*

The principal question involved in this case is whether a decision of this Court in *Free vs. Bland, supra,* is decisive in the present case as argued by petitioner in

petitioner's Brief for the Petitioner (Page 11). It is obvious that the factual situation in this case is different from the factual situation in *Free vs. Bland, supra,* and that this case is clearly within the exceptions noted by the Court in that case and urged by the Solicitor General in his amicus curiae brief in the case of *Free vs. Bland, supra.*

The holding, in *Free vs. Bland, supra,* is quoted as follows:

> We hold therefore that the state law which prohibits a *married couple* from taking advantage of the survivorship provisions of the United States savings bonds merely because the purchase price is paid out of community property must fall under the supremacy clause. (Emphasis supplied.)

In that case Mr. Free, acting with community funds, purchased the bonds naming the marital community of himself and his wife as co-owners. As manager of the community property, it was his privilege to select investments for the benefit of the community, which he would make, but the Court, in upholding Mr. Free's right to so invest community funds, also noted:

> Relief would be available in a case where the circumstances manifest fraud or breach of trust tantamount thereto on the part of the husband while acting in the capacity of manager of the community property.

The Yiatchos case fits into this exception and the relief sought to be maintained by respondent herein is the type of relief which the Court recognizes is available to her. In this case, a married couple does not seek to take advantage of the survivorship provisions of the Treasury Regulations. On the contrary, the husband in this case, Mr. Yiatchos, as manager of the community prop-

erty, has sought to use the device of United States savings bonds to deprive the wife of her vested interest in the community property and to make a gift of community property to his brother, the petitioner. The factual situation in the Yiatchos case, the present case, is clearly distinguishable from the factual situation upon which the Court decision in *Free vs. Bland, supra*, is based.

II.

THE ATTEMPT BY DECEASED, ANGEL N. YIATCHOS, TO CONVERT COMMUNITY PROPERTY INTO SEPARATE PROPERTY BY THE USE OF UNITED STATES SAVINGS BONDS IS IN FRAUD OF THE RIGHTS OF RESPONDENT AND THEREFORE VOID WITHIN THE EXCEPTION TO THE RULING IN *Free vs. Bland, supra*.

The Washington State Supreme Court, in its decision, found, as a matter of law, that

> The husband's purchase with community funds of bonds payable to him alone or after his death payable exclusively to his brother was in fraud of the rights of respondent wife, Pearle W. Yiatchos. This was a unilateral attempt to convert community property into separate property and void ab initio.

A husband is under a fiduciary duty to act for the benefit of the community. *(Yiatchos vs. Yiatchos*, 60 Wn 2d 179, 373 P 2d 125) He cannot make gifts of community property, even to his own relatives. *(Marston vs. Rue*, 92 Wn 129, 159 Pac. 111) His investment must be for the benefit of the community. *(Small vs. Bartyzel*, 27 Wn 2d 176, 177 P 2d 391) He cannot, as petitioner argues, unilaterally divide community property and decide which part of the property is his and

which belongs to the spouse. *(Cohn vs. Cohn*, 4 Wn 2d 322, 103 P 2d 366)

Obviously, Mr. Yiatchos' actions were fraudulent to the rights of Mrs. Yiatchos, who knew nothing of the bonds until she opened her husband's safety deposit box after his death.

It is, however, argued by petitioner in Brief for the Petitioner (Page 12), and in a law review comment on the case, 38 Wash. L. Rev. 255, that a doctrine of fraud enunciated by the Federal Court must be followed and that for the sake of uniformity, the single clear and concise definition of what they refer to as "Federal fraud" should be made by this Court.

The answer to this contention is that it seems it would be impossible for any court to define fraud without including the situation where an individual invests funds he has no right to invest for the purpose of divesting a rightful owner of an interest in those funds.

It is submitted that it would be well to adopt a rule that the test as to whether or not the survivorship provisions of the Treasury regulations concerning U. S. savings bonds applied would be that the purchaser of the bonds should have ownership or the right to invest the funds used to purchase said bonds.

As a mater of fact, the Treasury regulations themselves so provide. (31 C.F.R. 315.0, et seq.; 315.5, 315.7, 315.20, 315.66)

III.

TREASURY REGULATIONS REQUIRE THAT THE FORM OF REGISTRATION OF THE BONDS MUST EXPRESS THE ACTUAL OWNERSHIP OF AND INTEREST IN THE BONDS.

> Section 315.5 General. United States savings bonds are issued only in registered form. The form of registration must express the actual *ownership of* and *interest in* the bonds. (Emphasis added.)

This regulation necessarily implies that the purchaser or purchasers must own or have authority to invest the funds used. In *Free vs. Bland, supra*, the bonds purchased met the requirement that the registration must express actual ownership of and interest in the bonds. The husband and wife, and only the husband and wife, had an interest in the bonds purchased. In this case the brother, Gust Yiatchos, who is also petitioner, had no interest in the moneys used to purchase the bonds. It is conceded that community funds were used. The brother, Gust Yiatchos, had no interest in the bonds and like Mrs. Yiatchos, had no knowledge of their existence until the death of Mr. Yiatchos.

A further question to be decided by this Court is whether or not the testamentary disposition by the deceased or the survivorship provisions of the Treasury Regulations pertaining to the bond should control the disposition of the deceased's one-half interest in the bonds.

The Supreme Court of Washington correctly found that this unilateral attempt to convert community property into separate property was void ab initio and that the provisions of the subsequent will of the deceased distributing the funds should be followed.

As argued previously in this brief, the Treasury Regulations require the actual ownership and interest in the bonds to be expressed in the registration, and if so expressed, will be considered as conclusive of the ownership and interest.

It would appear to be the intent of the drafters of the Treasury Regulations that this provision was a condition precedent to the subsequent provisions of Sections 315.7, 315.60, and 315.66 concerned with the beneficiary provisions.

In the opinion of counsel for respondent the statement of the "Question Presented" by its own language contains the answer to said question.

In the State of Washington a wife has a vested property right in the community property equal to that of her husband. *Poe vs. Seaborn*, 75 L. ed. 238, 282 U.S. 101 (1930); *Warburton vs. White*, 176 U.S. 484, 44 L. ed. 555, 205 Ct. 404.

The purchase of the bonds with community funds by the husband in this case, without the knowledge or consent of the wife, constitutes a fraud on the wife without further evidence.

Petitioner, apparently recognizing the weakness inherent in the position that the named beneficiary is entitled to the total proceeds of the bonds, takes a secondary position that even if a husband cannot give away the wife's money, then and in that event, full force and effect should be given to the beneficiary designation as to the remaining one-half interest in the proceeds of the bonds.

The error of petitioner's reasoning on this issue is obvious. R.C.W. 11.04.050 provides:

> Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposi-

tion shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living or none of their representatives living, then the said community property shall all pass to the survivors, to the exclusion of collateral heirs, subject to the community debts, the family allowance and the charges and expenses of administration.

If petitioner's position is sustained, the share paid to the named beneficiary would escape the obligation to pay community debts. In other words, the fraud practiced on the wife would carry over to her share from the bond proceeds in that her share could be completely depleted in payment of community debts.

The fact that this particular estate is solvent is immaterial to the issues of this lawsuit. A principle of law should be such that it applies equally to all persons on property rights. The respondent's position in this cause will result in the establishment of such a principle. The petitioner's position would permit husbands to perpetrate fraud upon their wives and then invite further litigation to determine the financial condition of the estate, which results in the absurd conclusion that if an estate is solvent, then in that event, the Courts will approve the fraud. We cannot conceive the law can or should be susceptible to this interpretation.

Petitioner's contention that the survivorship regulations should be enforced in spite of the fact that the original purchase was fraudulent and that a subsequent will specifically distributes the proceeds of these bonds is a futile attempt to salvage, for Gust Yiatchos, the petitioner, an interest which he never had. It would ap-

pear that if the initial transaction was fraudulent, the entire transaction was fraudulent. If the initial transaction, the purchase of the bonds, violated Treasury Regulations concerning the interest and ownership in them, the entire transaction was illegal. Being slightly fraudulent or being slightly illegal is akin to being slightly pregnant. The condition dates from the moment of conception and cannot be altered by subsequent intent of the parties.

The decision of the Washington Supreme Court concerning the survivorship provisions should also be upheld.

No useful purpose is served by upholding the contentions of the petitioner in either case. The marketability of United States bonds is not affected by the judgment of the Washington Supreme Court. A simple and direct method of automatically transferring ownership on death still exists and its attractiveness to purchasing husbands or married couples has not diminished. It is not or should not be the object of the Treasury Department nor the usual inducement to the purchaser that the bonds be used as a means of depriving a wife of any share of funds in which she has an interest, without her knowledge and consent or to provide a means of fraud, actual or constructive, or to provide a means of concealing ill-gotten gains and making bonds a sanctuary for the profits of fraud and theft. It is not such a motive that prompts the sale of United States savings bonds, and if such a motive should exist, certainly it should not be the policy of the United States Government to foster it.

CONCLUSION

The Writ of Certiorari should be dismissed as improvidently granted or, in the alternative, the judgment of the Supreme Court of the State of Washington imposing a trust upon the bonds for the benefit of the surviving widow and distributing the balance according to the terms of the will of the deceased husband, should be affirmed.

Respectfully submitted,

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